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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CESAR SANTACRUZ, JAVIER) Case No.: C 07-1118 PVT
VALENCIA, et al.,) Case No.: C 08-0996 PVT
Plaintiffs,)
v.)
FRENCH CONNECTION BAKERY, INC.,)
et al.,)
Defendants.)
_____)

**ORDER DENYING PLAINTIFFS' MOTION
FOR SUMMARY ADJUDICATION WITH
RESPECT TO CESAR SANTACRUZ'S CLAIMS**

On June 8, 2008, Plaintiffs filed a Motion for Summary Adjudication with Respect to Cesar Santacruz's Claims. Defendants opposed the motion. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without oral argument. Based on the moving, opposition and reply papers submitted, and the file herein,

IT IS HEREBY ORDERED that Plaintiffs' motion is DENIED.

In this motion, Plaintiffs seek summary adjudication of the following matters:

- 25 1. Whether Defendants failed to keep accurate records with respect to of hours worked
26 by Plaintiff Cesar Stantacruz;
- 27 2. Whether Defendants failed to keep accurate records with respect to employment
28 period of Plaintiff Cesar Santacruz;
3. Whether Plaintiff Cesar Santacruz worked on average 6 days a week 13 hours a day;

- 1 4. What dates Plaintiff Cesar Santacruz was employed by Defendants;
- 2 5. Whether Plaintiff Cesar Santacruz was deprived of meal periods to which he was
entitled;
- 3 6. Whether Plaintiff Cesar Santacruz is entitled to liquidated damages;
- 4 7. Whether Plaintiff Cesar Santacruz is entitled to penalty under Labor Code § 203 equal
to 30 days' wage;
- 5 8. Whether individual Defendants Amirali Amini Alibadi and Soudabeh Aliabadi are
liable to Plaintiff Cesar Santacruz as his employer for unpaid overtime under FLSA;
and
- 6 9. Whether Plaintiff Cesar Santacruz is entitled to interest on the unpaid overtime and
unpaid meal premiums at the rate of 10% per annum.

10 Summary adjudication is not warranted for any of the foregoing issues because Plaintiffs
11 have failed to show that there is no genuine issue of material fact with regard to whether or not he
12 has been paid properly for all of the hours he worked.

14 **I. FACTUAL BACKGROUND**

15 Plaintiff Cesar Santacruz (“Santacruz”) is a former employee of Defendant, French
16 Connection Bakery Inc. (“French Connection”). Santacruz claims he worked, on average, 13 hours a
17 day, 6 days a week. Santacruz claims he worked for French Connection for about 1 month in 2002,
18 about 7 months in 2003, and then from May 17, 2005 to October 26, 2006. Santacruz also claims he
19 was not allowed to take an undisturbed 30-minute meal break for every 5 hours worked. Finally,
20 Santacruz claims French Connection did not keep accurate time records.

21 Defendants claim Santacruz worked only 4 to 8 hours, 5 to 6 days a week, and only from
22 February 12, 2006 to October 26, 2006. Defendants also claim Santacruz was allowed to, and did,
23 take appropriate meal breaks. Finally, Defendants claim that they did keep accurate time records.

25 **II. LEGAL STANDARD**

26 The purpose of summary judgment “is to isolate and dispose of factually unsupported claims
27 or defenses.” *See Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986). To obtain summary judgment, a
28 party must demonstrate that no genuine issue of material fact exists for trial, and that based on the

1 undisputed facts, he is entitled to judgment as a matter of law. *Id.* at 322. The moving party “bears
 2 the initial responsibility of informing the district court of the basis for its motion, and identifying
 3 those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file,
 4 together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of
 5 material fact.” *Id.* at 323. “If a moving party fails to carry its initial burden of production, the non-
 6 moving party has no obligation to produce anything...” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*,
 7 210 F.3d 1099, 1102-03 (9th Cir. 2000).

8 Declarations submitted in support of summary judgment must be made on personal
 9 knowledge, must set forth facts that would be admissible evidence, and must show that the declarant
 10 is competent to testify to the matters stated. *See FED.R.CIV.PRO. 56(e)(1)*. Any documentary
 11 evidence referred to in a declaration must be supported by a sworn or certified copy attached to or
 12 served with the declaration. *Ibid.* “Witness testimony translated from a foreign language must be
 13 properly authenticated and any interpretation must be shown to be an accurate translation done by a
 14 competent translator.” *See Jack v. Trans World Airlines*, 854 F.Supp. 654, 659 (N.D.Cal. 1994).

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16 III. DISCUSSION

17 Plaintiffs’ motion depends on the declarations of three non-English speakers. However,
 18 those declarations cannot be considered by the court in connection with this motion, because they do
 19 not satisfy the requirement that testimony translated from a foreign language be properly
 20 authenticated, and any interpretation be shown to be an accurate translation by a competent
 21 translator.¹ *See Jack v. Trans World Airlines*, 854 F.Supp. at 659. Because the declarations are
 22 deficient, the documents attached to the declarations are not properly authenticated, and also cannot
 23 be considered. *See CIVIL L.R. 7-5(a)*. Thus, Plaintiffs have not met their initial burden of showing
 24 that no genuine issue of material fact exists for trial, and that based on the undisputed facts, he is
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26 ¹ This failure to follow proper procedures is particularly troubling in light of the fact
 27 Plaintiffs’ attorney was made aware of this requirement in another case less than two years ago. *See Cai*
v. Fishi Cafe, Inc., 2007 WL 2781242 (N.D. Cal.,2007). Counsel is cautioned that filing patently
 28 defective motions which multiply proceedings unnecessarily and vexatiously can result in sanctions
 under 28 U.S.C. § 1927. The court notes that Defendants have requested sanctions. However, any such
 request must be made by separate motion. *See CIVIL L.R. 7-8(a)*.

1 entitled to judgment as a matter of law. *See Celotex v. Catrett*, 477 U.S. at 322.

2 Moreover, even if Plaintiffs' declarations contained admissible evidence, Defendants have
3 submitted evidence that creates genuine issue of material fact for trial regarding all of the matters put
4 at issue in this motion other than: 1) the issue of whether Santacruz was allowed to take undisturbed
5 meal periods each time he was entitled to one;² and 2) the issue of whether the individual Defendants
6 are personally liable for any unpaid overtime.³

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8 **IV. CONCLUSION**

9 Because Plaintiffs' motion is dependant on defective declarations, summary adjudication is
10 not warranted. This order is without prejudice to Plaintiffs filing a new motion for summary
11 adjudication with regard solely to the issue of whether Plaintiff Santacruz was allowed to take all of
12 the undisturbed 30 minute meal breaks he was entitled to take. Plaintiffs must support any such
13 motion with proper Spanish language declarations that are supported by certified translations which
14 are shown to have been prepared by a competent translator.

15 Dated: 7/24/09

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17 PATRICIA V. TRUMBULL
United States Magistrate Judge

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25 ² The only evidence Defendants submit to counter Plaintiffs' evidence on this issue is the
declaration of Defendant Amirali Amini Alibadi, who does not appear to base his testimony on first hand
knowledge. The lack of any declaration from the individual Plaintiffs claim interfered with the breaks,
Defendant Soudabeh Aliabadi is significant in this regard.

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27 ³ Defendants do not appear to dispute the legal proposition that the individual Defendants
had sufficient control over Santacruz's work to render them liable for any unpaid overtime. However,
because Plaintiff has not established with this motion that there is any unpaid overtime due, summary
adjudication of this issue is not warranted at this time.